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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/823,377
Filing Date: March 30, 2001
Appellant(s): FERMAN ET AL.

KURT ROHLFS
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/28/08 appealing from the Office action mailed 11/02/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0093792	LABEED ET AL.	5-2003
6,637,029	MAISSEL ET AL.	10-2003
5,956,037	OWASA ET AL.	9-1999
7,127,735	LEE ET AL.	10-2006

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A1. Claims 24-27 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by **Labeeb et al (2003/0093792)**, as set for in prior office action mailed 11/02/07 and repeated below.

As to claims 24-27 and 45, **Labeeb** further disclose in figures 1-5, a method and apparatus for delivery of TV programs and targeted advertising and further discloses in combination with an audiovisual information management system resident on an electronic device having a memory, a description scheme for at least one of an audio, an image, and video comprising a plurality of frames comprising:

Information about a user with respect to at least one of audio, image and video based upon interaction of the at least one of the audio, image, and video and the profile

information includes at least one type characterized by, at least in part, a time associated with the at least audio, image and video and processes information to determine preferences of the user (figs.1-5, page 3, [0067-0071], [0077]); and the usage history description scheme includes data indicating whether personal identification information of the user is intended to be revealed to third parties (figs.51-53, [0234-0235], [0244-0245], [2911-2912], [(2925-2928), [2936] and [3018-3023]), note that Labeeb discloses a scheme that guarantees privacy information based on the user's or the EUE preference settings, such that for users requiring a guarantee that private or personal information cannot leave their EUE, privacy is set at the manufacture and cannot be altered by software upgrade, tampering, etc.; non-concerned users purchase or receive special EUE that enables return path sampling and other data to be collected ([2925-2926]). Labeeb further discloses other privacy protection scheme such as the use of pre-paid cards ([2925-2926]). Hence as illustrated in figs.52-53, the received usage data at ADMgr/Head end, from the EUE, includes data indicating whether private or personal identification information of the user is intended to be revealed to a third parties (e.g., advertisers).

A2. Claims 2-5, 11-15, 28-38, 43-44 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)**.

As to claims 2-5, note the **Maissel** reference figures 1-3, discloses a subscriber unit for receiving a program schedule, a profile storage unit for storing at least viewer

preference, etc., and further discloses An electronic device for receiving a plurality of content comprising at least one of audio, an image, and a video, the electronic device comprising:

A receptacle (Receiver 'R' 110) for receiving a selectively insertable mobile storage device storing a usage preferences description scheme that describes current preferences of a user with respect to the at least one of an audio, an image, or a video (160, Diskette or Smart Card, col.14, line 54-col.15, line 16) comprising:

A memory storing a usage history description scheme for the at least one of an audio, an image and a video comprising a plurality of frames, the usage history description scheme (figs.1-2, col.12, line 16-col.14, line 53) comprising:

Information stored in the memory about a user about a user with respect to at least one of audio, image and video, based upon the viewer's interaction or previous usage of the at least one of the audio, image, and video and the profile information includes at least one description type defined by, at least in part, a thesaurus describing possible user actions where the electronic device is capable of retrieving the usage preferences description scheme from the mobile storage device (160) when inserted into the receptacle and based upon the retrieved usage preferences description scheme, automatically identifying selective portions of the content, and where the electronic device periodically automatically updating the usage preferences description scheme stored on the mobile storage device, based upon the usage history description scheme and capturing content for usage history description scheme at a selectable level of detail based on the user's actions and at multiple levels of granularity and where

the user-description schemes stored on the mobile storage device includes an attribute by which the user selectively prevent updates the user preference description scheme based on the usage history description scheme (col.12, line 16-col.14, line 53, col.14, line 54-col.15, line 16 and line 38-col.16, line 11), note that the profile loading apparatus 160, can also record (updating) viewer preference profile on any recording media (diskette or smart card) for transport to another viewer of similar apparatus. The system periodically updates the usage profile stored in the receiving unit and hence, each time the smart card is inserted, it automatically updates or loads the card with current usage data stored on the receiving apparatus. The user is enabled to add, delete and modify any preference information and furthermore selectively prevents the electronic device from updating by turning on or off collection of viewer preference profile information (col.12, line 50-col.13, line 7).

Maissel further discloses where Intelligent agent 130 of user system 110 applies filtering content: subject matter, parental control, etc. to the content (figs.9A+, col.11, lines 30-37 and col.14, line 20+), but silent as to where the history includes VCR-like functions, such as: pausing, fast-forwarding, reversing or rewinding, skipping, etc., "other selectable level of detail" to the content of at least one of audio and video, to select portions of the content descriptions.

However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous

operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Osawa into the system of Maissel to edit the video and audio information based on operation history or VCR-like functions of the user, thereby when a user edits/processes received video information with his or her video recoding unit, he or she should perform the required operations while seeing the display.

As to claims 11-15, the claimed "In combination with an audiovisual information management..." is composed of the same structural elements that were discussed with respect to the rejection of claims 2-5.

As to claims 28-33, the claimed "In combination with an audiovisual information management..." is composed of the same structural elements that were discussed with respect to the rejection of claims 2-5.

As to claims 34-36, the claimed "In combination with an audiovisual information management..." is composed of the same structural elements that were discussed with respect to the rejection of claims 2-5.

As to claims 37-38, Maissel further discloses where the content, is used by parents to track their children's viewing habits and access to objectionable content (col.11, lines 30-37 and col14, lines 20-53).

Claims 43-44 and 46-48 are met as previously discussed with respect to claims 2-5.

A3. Claims 16 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)** and further in view of **Lee et al (7,127,735)**

As to claims 16 and 19-23, note the **Maissel** reference figures 1-3, discloses a subscriber unit for receiving a program schedule, a profile storage unit for storing at least viewer preference, etc., and further discloses An electronic device for receiving a plurality of content comprising at least one of audio, an image, and a video, the electronic device comprising:

A receptacle (Receiver 'R' 110) for receiving a selectively insertable mobile storage device storing a usage preferences description scheme that describes current preferences of a user with respect to the at least one of an audio, an image, or a video (160, Diskette or Smart Card, col.14, line 54-col.15, line 16) comprising:

A memory storing a usage history description scheme for the at least one of an audio, an image and a video comprising a plurality of frames, the usage history description scheme (figs.1-2, col.12, line 16-col.14, line 53) comprising:

Information stored in the memory about a user about a user with respect to at least one of audio, image and video, based upon the viewer's interaction or previous usage of the at least one of the audio, image, and video and the profile information includes at least one description type defined by, at least in part, a thesaurus describing

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possible user actions where the electronic device is capable of retrieving the usage preferences description scheme from the mobile storage device when inserted into the receptacle and based upon the retrieved usage preferences description scheme, automatically identifying selective portions of the content, and where the electronic device periodically automatically updating the usage preferences description scheme stored on the mobile storage device, based upon the usage history description scheme and capturing content for usage history description scheme at a selectable level of detail based on the user's actions and at multiple levels of granularity and where the user-description schemes stored on the mobile storage device includes an attribute by which the user selectively updates the user preference description scheme based on the usage history description scheme (col.12, line 16-col.14, line 53, col.14, line 54-col.15, line 16 and line 38-col.16, line 11), note that the profile loading apparatus 160, can also record (updating) viewer preference profile on any recording media (diskette or smart card) for transport to another viewer of similar apparatus. The system automatically periodically updates the usage profile stored in the receiving unit and hence, each time the smart card is insert it is automatically periodically updated with the current usage profile

Maissel is silent as to selectable level of details which enables filtering out content using for e.g., VCR-like functions, such as: pausing, fast-forwarding, reversing or rewinding, skipping, etc., of the content of at least one of audio and video, to select portions of the content descriptions.

However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Osawa into the system of Maissel to edit the video and audio information based on operation history or VCR-like functions of the user, thereby when a user edits/processes received video information with his or her video recoding unit, he or she should perform the required operations while seeing the display.

Maissel as modified by Osawa, fail to explicitly teach where the usage history description scheme is not used by the audiovisual information management system to do any actions selected from the list of: selecting, filtering or searching of the at least one of an audio, an image or video.

However, note **Lee** reference figure 2, discloses a VOD system and video viewing assisting method, where a profile card stores a user's viewing or usage data and transmitted the usage data to a server where the server analyzes the received usage data (fig.2, col.4, line 10-63 and col.5, line 24-50).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Lee into the system of Maissel as modified by Osawa to provide additional storage medium to store and transmit to a server, a user usage data, thereby providing additional protection to stored usage data.

A4. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)** and further in view of **Lee et al (7,127,735)** as applied to claim 16 above and further in view of **Labeeb et al (2003/0093792)**.

As to claims 17-18, Maissel as modified by Osawa and Lee, fail to explicitly teach where the level of details is based on the capabilities of the system and suitable for interchangeability with other systems.

However, Labeeb further discloses where the level of details is based on the capabilities of the system and suitable for interchangeability with other systems ([0167], [0205], [0262], [1791] and [2820+]).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Labeeb into the system of Maissel as modified by Osawa and Lee to encode multiple versions of data to meet processing capabilities of various devices.

(10) Response to Argument

With respect to **Claims 24-27 and 45 (GROUP I, as indicated by Appellant)**, rejected under 35 U.S.C. 102(e) as being anticipated by **Labeeb et al (2003/0093792)**, Appellant discusses the prior art of record cites a few columns in the disclosure and argues that the prior art of record does not teach the claim limitations, i.e. "...said usage history description scheme including data indicating whether personal identification information of said user is intended to be revealed to third parties..."(see page 8 of 24+ of Appellant's Brief)

In response, Examiner disagrees. Examiner notes Appellant's arguments, however Labeeb teaches that the preference agent includes a software that allows it to create demographic profile for each user and uses certain algorithms and associated rules that enables advertisers to custom tailor targeted ads to users and further ensures users privacy to delete personal information when necessary. In addition provides incentives to users to convince them to supply this type of information and carefully selects users accordingly ([2925-2926]). Labeeb discloses scheme that guarantees privacy information based on a use or EUE preference settings, such that for customers requiring a guarantee that private information cannot leave their EUE, privacy is set at the manufacture and cannot be altered by software upgrade, tampering, etc.; non-concerned users purchase or receive special EUE that enables return path sampling and other data to be collected ([2925-2926]). Labeeb further discloses other privacy protection scheme such as the use of pre-paid cards. ([2925-2926]). Hence as illustrated in figs.52-53, the received usage data at ADMgr/Head end, from the EUE, includes data indicating whether personal identification information of the user is

intended to be revealed to a third parties (e.g., advertisers). Hence the 102(e) rejection of the claims is proper, meets all the claims limitations and should be sustained.

With respect to **Claims 2-5, 34-38 and 48 (GROUP II, as indicated by Appellant)** rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)**, Appellant discusses the prior arts of record, recites the claims limitations and further argues that Maissel includes no attribute, "...which said user may selectively prevent the electronic device from updating said usage preference description scheme based on usage history description scheme" that "selectively defining multiple levels of granularity by which the content of said usage history description scheme may be automatically accumulated and stored on said mobile storage device while inserted in the multimedia system.", (see page 9 of 24 of Appellant Brief).

In response, Examiner disagrees. Examiner notes Appellant's arguments, Maissel discloses a receptacle (Receiver 'R' 110) for receiving a selectively insertable mobile storage device (160, Diskette or Smart Card) storing a usage preferences description scheme that describes current preferences of a user with respect to the at least one of an audio, an image, or a video (fig.2, col.11, lines 44-47 and col.14, line 54-col.15, line 16), which when inserted in the multimedia system stores a usage preferences description scheme. Maissel discloses that the mobile terminal is transported between client/server or between clients, via conventional mail and it automatically accumulates and stores data accordingly while inserted in System 110

(fig.2 and col.14, line 54-col.15, line 37). Maissel further discloses that the viewer can add, delete or modify any information of the viewer preference profile, including providing information on programs or types of programs the viewer prefers to view or prefers not to view including turn off or on the collection of viewer preference profile information, which meets the limitations (col.12, line 46-col.13, line 23) "...user may selectively prevent the electronic device from updating said usage preference description scheme based on usage history description scheme..." As disclosed by Maissel, by inserting mobile terminal 160 in the multimedia system 110, mobile terminal 160 replaces profile storage unit 140 and hence performs all functions of System 110 (col.11, lines 38-47, line 48-col.12, line 1+ and col.13, line 47-col.15, line 37). Maissel is silent as to where the history includes selectable level of detail or selectively defining multiple level of detail, including various VCR-like functions, such as: pausing, fast-forwarding, reversing or rewinding, skipping, etc., to portion of the content of at least one of audio and video, to selected portions of the content descriptions. However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63). Hence the

103(a) rejection of Maissel in view of Osawa is proper, meets all the claims limitations and should be sustained.

With respect to **Claims 11-15 and 43 (GROUP III, as indicated by Appellant)** rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)**, Appellant discusses the prior arts of record, recites the claims limitations and further argues that Maissel does not disclose "said usage history description scheme used by said system to automatically periodically update a usage preference description of said user on said mobile storage device, while said mobile storage device is inserted in the multimedia system" (see page 11 of 24, of Appellant's Brief).

In response, Examiner disagrees. Examiner notes Appellant's arguments, Maissel discloses where the usage history description scheme used by the system to automatically periodically update a usage preference description of the user on the mobile storage device (Apparatus or Mobile 160, recording medium, e.g., diskette, smart card, etc.), while inserted in the multimedia system. Maissel discloses that the mobile terminal is transported between client/server or between clients, via conventional mail and it automatically accumulates and stores data accordingly while inserted in System 110 (fig.2 and col.14, line 54-col.15, line 37). Maissel further discloses that the viewer can add, delete or modify any information of the viewer preference profile, including providing information on programs or types of programs the viewer prefers to view or prefers not to view including turn off or on the collection of viewer preference

profile information, which meets the limitations (col.12, line 46-col.13, line 23) "...user may selectively prevent the electronic device from updating said usage preference description scheme based on usage history description scheme..." As disclosed by Maissel, by inserting mobile terminal 160 in the multimedia system 110, mobile terminal 160 replaces profile storage unit 140 and hence performs all functions of System 110 (col.11, lines 38-47, line 48-col.12, line 1+ and col.13, line 47-col.15, line 37). Maissel is silent as to where the history includes reference selected portions of the selected content, for e.g., using various VCR-like functions, such as: pausing, fast-forwarding, reversing or rewinding, skipping, etc., of the content of at least one of audio and video, to selected portions of the content descriptions. However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63). Hence the 103(a) rejection of Maissel in view of Osawa is proper, meets all the claims limitations and should be sustained

With respect to **Claims 16-23 and 44 (GROUP IV, as indicated by Appellant)** rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)**

in view of **Osawa et al (5,956,037)** and further in view of **Lee et al (7,127,735)**, Appellant discusses the prior arts of record, recites the claims limitations and further argues that the combination of the prior arts of record is not proper (see page 12 of 24+, of Appellant's Brief).

In response, Examiner disagrees. Examiner notes Appellant's arguments, Maissel discloses selectively defining multiple levels of granularity by which the content of usage history description scheme may be automatically accumulated and stored on mobile storage device (Apparatus or Mobile 160, recording medium, e.g., diskette, smart card, etc.) while inserted in the multimedia system. Maissel discloses that the mobile terminal is transported between client/server or between clients, via conventional mail and it automatically accumulates and stores data accordingly while inserted in System 110 (fig.2 and col.14, line 54-col.15, line 37). Maissel further discloses that the viewer can add, delete or modify any information of the viewer preference profile, including providing information on programs or types of programs the viewer prefers to view or prefers not to view including turn off or on the collection of viewer preference profile information, including filtering out content specific content ("selectable" channel(s), programs, news, sports, etc.,) and undesirable content (col.11, lines 30-37, col.14, lines 20+ and col.12, line 46-col.13, line 23). As disclosed by Maissel, by inserting mobile terminal 160 in the multimedia system 110, mobile terminal 160 replaces profile storage unit 140 and hence performs all functions of System 110 (col.11, lines 38-47, line 48-col.12, line 1+ and col.13, line 47-col.15, line 37). Maissel is silent as to selectable level of detail, for e.g., using various VCR-like functions, such as: pausing, fast-forwarding,

reversing or rewinding, skipping, etc., of the content of at least one of audio and video, selected portions of the content descriptions. However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63). Maissel as modified by Osawa, fail to explicitly teach where the usage history description scheme is not used by the audiovisual information management system to do any actions selected from the list of: selecting, filtering or searching of the at least one of an audio, an image or video. However, in the same field of endeavor, **Lee** discloses in figure 2, a VOD system and video viewing assisting method, where a profile card stores a user's viewing or usage data and transmitted the usage data to a server where the server analyzes the received usage data (fig.2, col.4, line 10-63 and col.5, line 24-50). Hence the 103(a) rejection of Maissel in view of Osawa and further in view of Lee, is proper, meets all the claims limitations and should be sustained.

With respect to **Claims 28-33, 46 and 47 (GROUP V, as indicated by Appellant)** rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** in view of **Osawa et al (5,956,037)**, Appellant discusses the prior arts of k,lk

record, recites the claims limitations and further argues that Maissel does not disclose "selectively defining multiple levels of granularity by which the content of said usage history description scheme is automatically accumulated, wherein the content of said usage history description scheme is used to update a usage preference description scheme." (see page 13 of 24 of Appellant Brief).

Maissel further discloses storing information about user with respect to one of audio, image and video and permits the user to add, delete or modify any information of the viewer preference profile, including providing information on programs or types of programs the viewer prefers to view or prefers not to view including turn off or on the collection of viewer preference profile information, including filtering out content specific content ("selectable" channel(s), programs, news, sports, etc.,) and undesirable content (col.11, lines 30-37, col.14, lines 20+ and col.12, line 46-col.13, line 23). Maissel is silent as to permitting a user to selectively define the content of usage history description scheme at multiple levels of granularity. However, **Osawa** discloses in figures 1-3, a video information providing/receiving system where the providing unit (Host 208) includes video information editing unit (211), which edits video based on extracted operation history information of User Terminal (UT) 200, which includes various VCR-like functions and further teaches using previous operation history to playback other video thereby providing the flexibility of the user to manipulate the video at various levels as desired (col.2, lines 43-52, col.3, line 62-col.4, line 24, line 37-col.5, line 19 and col.7, line 26-col.8, line 1+ and col.11, lines 27-63). Hence the 103(a)

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rejection of Maissel in view of Osawa, is proper, meets all the claims limitations and should be sustained.

(11) Related Proceeding(s) Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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